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April 4, 2002

Via Electronic Mail Delivery

William F. Caton, Acting Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

**Re: *Ex Parte Presentation*
Wireless Access Charges – WT Docket No. 01-316**

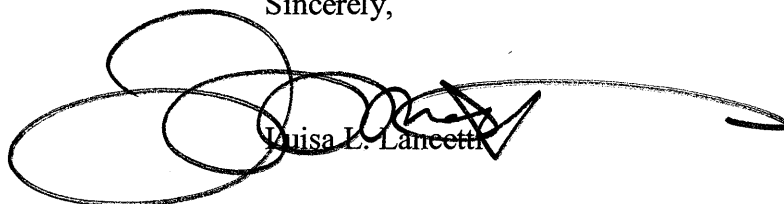
Dear Mr. Caton:

This letter serves as notification that on April 3, 2002 Luisa Lancetti and Charles McKee (representing Sprint PCS) met with Gregory Vadas, Jared Carlson, Joseph Levin, Stacy Jordan, Eli Johnson and Gregory Guice (of the Wireless Telecommunications Bureau), and Victoria Schlesinger, Jane Jackson, Tamara Preiss and Steve Morris (of the Wireline Competition Bureau) to discuss the application of access charges on interexchange carriers terminating traffic to CMRS providers. A copy of the presentation material discussed at the meeting is attached hereto.

Pursuant to Section 1.1206(b)(1) of the Commission rules, one copy of this letter is being filed with your office electronically. Please associate this letter with the file in the above-captioned proceeding.

Please contact us should you have questions concerning the foregoing.

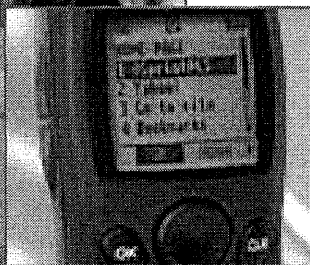
Sincerely,



Luisa L. Lancetti

Attachment

cc: Gregory Vadas
Jared Carlson
Joseph Levin
Stacy Jordan
Eli Johnson
Gregory Guice
Victoria Schlesinger
Jane Jackson
Tamara Preiss
Steve Morris



Wireless Access Charges

WT Docket No. 01-316

Sprint PCS

April 3, 2002



Sprint PCS®

Wireless Carriers Are Currently Providing Exchange Access Service to IXC's

- The Communications Act acknowledges that wireless carriers provide exchange access service. 47 U.S.C. 332(c)(8). *See also*, First Report and Order, paragraph 1004, (“Congress recognized that some CMRS providers offer telephone exchange and exchange access services.”)
- The FCC has held that wireless carriers provide exchange access service: “We also agree with several commenters that many CMRS providers (specifically cellular, broadband PCS and covered SMR) also provide telephone exchange service and exchange access as defined by the 1996 Act.” First Report and Order, paragraph 1012.
- AT&T does not deny wireless carriers provide terminating access. AT&T would be unable to provide service to its customers without access to the Sprint PCS network.

Wireless Rates for Exchange Access Service are Not Regulated

- The FCC, to promote wireless competition, eliminated regulation of wireless access charges, along with the charges to their end user customers and operator services. CMRS Second Report and Order 9 F.C.C.R. 1411 (March 7, 1994).
- “[W]e will forbear from requiring or permitting CMRS providers to file tariffs for interstate service offered directly by CMRS providers to their customers. **We also will temporarily forbear from requiring or permitting CMRS providers to file tariffs for interstate access service. At this time, because of the presence of competition in the CMRS market, access tariffs seem unnecessary.**” Id. at paragraph 179.
- The FCC has never suggested that wireless carriers should not be compensated for providing services to third parties.

FCC Cannot Retroactively Prohibit Wireless Carriers From Charging for Services Rendered.

- An FCC Order which retroactively prohibits the imposition of charges for services rendered in an unregulated environment would be improper retroactive rate making. *See, e.g., Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988); *Jahn v. 1-800-FLOWERS.com*, No. 01-299, 2002 U.S. App. LEXIS 5292 (7th Cir., March 29, 2002)
- Such a decision would create a retroactive rate of zero despite the fact that AT&T concedes that Sprint PCS incurs costs to terminate traffic on their behalf.
- FCC cannot prohibit a carrier from recovering the cost of providing a service to a third party, particularly under the existing Calling Network Party Pays regime.

IXCs Do Not Offer “Bill and Keep” to Wireless Carriers

- Bill and Keep is the mutual exchange of services. The Act describes “Bill and Keep” as “the mutual recovery of costs through the offsetting of reciprocal obligations.” 47 U.S.C. 252(d)(2)(B)(i).
- The FCC has held that “Bill and Keep” can only be imposed if “the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction, and is expected to remain so. . .” 47 C.F.R. 51.711(b).
- AT&T provides no services to Sprint PCS. The relationship is entirely one way. Indeed, wireless carriers currently pay IXCs to carry traffic for them. AT&T is unwilling to accept wireless traffic without compensation.
- “Bill and Keep” as defined by AT&T simply means the wireless end user should pay for the cost of all calls that either originate or terminate to them.

AT&T's Own Comments Demonstrate the Inconsistency of Their Position.

- **AT&T Declaratory Ruling Petition** (Oct. 22, 2001)
- “The prevailing bill and keep system is thus the most efficient and deregulatory compensation mechanism for IXC-CMRS interconnection. * * * [A] bill and keep regime for wireless termination or origination of interexchange calls [is] preferable as a matter of economic theory. * * * [B]ill and keep is the economically optimal solution.”
- **AT&T Comments**, Docket No. 01-92 (Aug. 21, 2001)
- “B&K simply cannot make economic sense, even as a matter of theory, unless traffic is in balance. But traffic is necessarily out of balance in the context of interexchange access. * * * And even apart from the reasons why B&K is inferior to CPNP as a general matter, it would be unworkable in the access charge context. * * * B&K would clearly be inappropriate in the context of interstate access charges. * * * B&K for interexchange access services would harm competition and consumers.”

The Refusal of AT&T to Pay Does Not Create a Binding Industry Standard

- Wireless carriers were traditionally required to pay other carriers to accept traffic from them, but the Commission recognized that this was simply anti-competitive conduct designed to take advantage of new entrants.
- AT&T now makes the same argument that they should not be required to pay for services rendered because they have managed to avoid paying for them to date.
- Other IXC's were paying for access services rendered until AT&T's refusal to pay became known through Sprint PCS's court challenge.
- AT&T is either double recovering from their end user customers or it is requiring wireless carriers to subsidize the operation of its network through inclusion of a "zero" rate for terminating to wireless carriers.

AT&T Has a Remedy if it Believes Sprint PCS' Rates are not Just and Reasonable

- In the Second Report and Order the FCC found that there was sufficient competition in the CMRS market place to forbear from imposing tariff requirements.
- In so holding the FCC noted: "In the event that a carrier violated Section 201 or 202, the Section 208 complaint process would permit challenges to a carrier's rates or practices and full compensation for any harm due to violations of the Act." paragraph 176.
- AT&T has availed itself of this option by filing a counterclaim in Federal District Court and seeking referral to the FCC.

The FCC Can Create a Prospective Safe Harbor if Wireless Carrier Rates are Not Just and Reasonable

- In the Seventh Memorandum and Order revising the application of access rates by CLECs, the Commission established certain safe harbors for CLEC access rates.
- If the FCC determines that a safe harbor is necessary for wireless carriers (despite the fact that wireless carriers are charging substantially less than most CLECs were charging in the previous complaint cases), it must acknowledge the cost differences between wireline and wireless service.
 - Rural Coverage Not Provided by CLECs
 - Nationwide Termination
 - Inherently More Expensive Technology which Provides Greater Services

Public Policy Does not Support AT&T's Position

- The Commission, and specifically Chairman Powell, has articulated a vision of intermodal competition. Wireless networks have become the only real hope for actual competition in the local exchange market.
- Intermodal competition cannot occur where wireless carriers are required to subsidize incumbent LECs, CLECs and IXC's.
- FCC continues to impose regulatory obligations on wireless carriers to create a service that parallels landline services, e.g., LNP and E911.
- FCC cannot expect competition to flourish if wireless carriers are forced to shoulder the regulatory burdens of an incumbent LEC but deny the same carriers from recovering the cost of providing those services or require wireless carriers to subsidize their competition.

Future Policy Changes Do Not Justify Discrimination Under Current Policy

- While Sprint supports the long term implementation of a bill and keep regime, both Sprint and AT&T have acknowledged that there are multiple problems associated with a bill and keep regime in the access charge arena.
- There is no policy justification for eliminating the revenue side of the CPNP system for wireless carriers while continuing to impose the expense side of the CPNP system.